

REMARKS

The Office Action dated March 27, 2003, has been carefully considered. In the Office Action, the Patent Examiner rejected claims 5-18. By way of this amendment, claims 5, 9, and 10 have been amended and claim 19 has been added. Applicant respectfully requests reconsideration and reexamination of the claims in view of the foregoing amendments and the following remarks.

First, turning to the claim objections on page 2 of the Office Action, Applicant has amended claim 9 to remove the multiple dependency to claim 5. Claim 19 has been added to depend on claim 5 to pick up the lost dependency of claim 9. Accordingly, Applicant requests removal of this claim objection.

Turning to the claim rejections under § 112, Applicant is pleased that a number of the § 112 issues have been resolved. However, some still remain. First, regarding the rejection in paragraph 6 of the Office Action, Applicant has deleted the phrase "the dry type". Also regarding paragraph 9 of the Office Action, Applicant has deleted the phrase "such as a food product." Thus, these issues in the paragraphs are moot.

Regarding paragraph 7 of the Office Action, Applicant advises the Patent Examiner that the phrase "intended to be closed" was previously deleted out of claim 10 via Applicant's last amendment. Therefore, the issue in paragraph 7 appears to be an improper holdover from the prior Office Action and removal of this issue is solicited.

Regarding paragraph 11 of the Office Action, the Patent Examiner has rejected the term "majority" as being relative and therefore indefinite. This rejection is respectfully traversed under MPEP § 2173.05(b) which states that "the fact that the claim language, including terms of degree, may not be precise does not automatically render the claim indefinite under 35 USC § 112" (Citation to case omitted). The term majority has a well understood meaning and includes a number greater than half of a total as is set forth in Webster's Dictionary. Therefore, there is a well-understood meaning as it pertains to this term and it is not indefinite under MPEP § 2173.05(b) and removal of this issue is requested.

Regarding paragraph 10 of the Office Action, the Patent Examiner has asserted that the phrases "adapted to be stored by rolling" and "adapted to be cut/closed" are indefinite. As a preliminary matter, Applicant has removed "adapted to be stored by rolling" and replaced it with affirmative language to make it a clear affirmative recitation that the packaging is connected together in a film and is rolled up on a roll. This more clearly differentiates the prior art, but also renders part of this indefiniteness rejection moot. As to the phrase "adapted to be cut/closed", there is nothing wrong with that phrase as is explicitly provided in the

Manual of Patenting and Examining Procedure, MPEP § 2173.05(g) entitled "Functional Limitations". In particular, this section of the MPEP recites "there is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not in and of itself render a claim improper." Id. citing *In re Swinehart*, 439F.2d 210, 169 USPQ 226 (CCPA 1971). Further, MPEP 2173.05(g) specifically authorizes the use of "adapted to" or "adapted for" type language and specifically cites *In re Venezia*, 530F.2d 956, 189 USPQ 149 (CCPA 1976) that held such use proper. MPEP § 2173.05(g). If the Patent Examiner has legal authority on this issue, Applicant respectfully requests to know what it is, because the cited section of MPEP and case law appears to be perfectly clear that functional limitations and use of "adapted to" are indeed proper in apparatus claims.

Finally, the Patent Examiner in paragraph 8 has objected to the phrase "when there is mutual contact" and asserted that it adds no positive recitation to the claim and is therefore indefinite. In response thereto, Applicant has made clear in the claim that the film is connected and stored up in a longitudinal direction on a roll. Accordingly, the phrase "when there is mutual contact" has been amended to read "due to said mutual contact" (with prior antecedent basis being provided) to make it more clear in the context of the packaging wrapper being rolled up on a roll. According, the issues raised in paragraph 8 of the Office Action are believed to be resolved.

In view of the foregoing, Applicant asks the Patent Examiner to withdraw all § 112 rejections.

Turning to the rejections on the prior art, and as a preliminary matter, Applicant respectfully requests the Patent Examiner to withdraw the issues raised in paragraph 13 of the Office Action. Applicant has previously made a translation of the foreign priority papers of record in the patent application via the last amendment filed on January 6, 2003. The Patent Examiner apparently has acknowledged this by removing the rejections based on Cosentino et al. It is believed, therefore, that paragraph 13 was overlooked by the Patent Examiner and is an improper holdover issue from a prior Office Action. Accordingly, because Applicant has made the foreign priority papers of record in accordance with 37 CFR 1.55 in Applicant's last amendment, Applicant respectfully requests the Patent Examiner to acknowledge receipt and to withdraw the statement made in paragraph 13 of the Office Action.

Turning to the more substantive issues, the Patent Examiner has asserted that the claims are either anticipated or obvious over U.S. Patent No. 3,055,576 to Ottinger et al. or WO92/19508 to Jones et al. By way of this amendment, Applicant has amended the claims to make even clearer the differentiation of the present invention over the prior art of record. In particular, Applicant has now made clear that the packaging wrapper is connected in a film

which is rolled up in a longitudinal direction on a roll with mutual contact between adhesive strips as is now claimed in claim 10 as amended. As a result of this affirmative claiming strategy, the Patent Examiner can no longer state that the phrase pertaining to how the packaging is adapted to be stored on a roll is no consequence as has been asserted on page 5 of the Office Action. Instead, the Patent Examiner must now consider these affirmative claim recitations. In considering these claim recitations, neither of the cited prior art references disclose "mutual contact existing between the inner and outer strips in the wound state on the roll" (the inner and outer strips being the cold sealing coating) as is now claimed in claim 10 as amended. In contrast, as shown in FIG. 1 of Ottinger et al., the exact opposite is taught, namely the strips 7 and 8 which appear on opposed sides never come in contact when stored on a roll. Jones et al. also has the same deficiency in that it teaches use of interleaving material 3 that specifically prevents mutual contact between the inner and outer strips. (see Abstract)(and page 12, line 26 to page 13, line 6 specifying that the interleaving material 3 prevents contact of the areas 4 and 5 of cold seal adhesive 6 when on the reel 2). Accordingly, Ottinger et al. and Jones et al. fail to teach a material limitation of claim 10 and in fact teach directly against the claimed invention of the present application which recites mutual contact between the inner and outer strips in the wound state on the roll as is now claimed. Accordingly, because the cited prior art references fail to teach every element and limitation of independent claim 10, there can be no anticipation under MPEP § 2131.

In addition, the cited prior art references must also fail to establish a case for obviousness, because under MPEP § 2143, one of the requirements for a *prima facie* case of obviousness is that "the prior art references (or references when combined) must teach or suggest all the claim limitations." *Id.* In this case, none of the prior art teaches or suggests mutual contact existing between the inner and outer strips of cold seal coating on opposed faces of the packaging in the wound state on the roll as is claimed in claim 10.

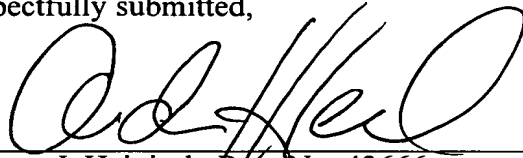
Accordingly, Applicant respectfully requests the prior art rejections to be withdrawn. Because the dependent claims at a minimum include all of the base limitations of independent claim 10, the prior art rejections for these claims fall apart for at least the same reasons. As a result, Applicant need not go into the separate patentability for these claims at this time. In view of the foregoing, Applicant respectfully requests the Patent Examiner to withdraw all outstanding rejections and to issue a Notice of Allowance.

In re Appln. of: Eddy Daelmans et al.
Application No.: 09/807,093

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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